

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 519 of 2004

Between:

M.Kesava Reddy, S/o.M.V.Narisi Reddy,
A.P.Residential School, Kodigenahalli, Ananthapur District.

..... PETITIONER

AND

- 1 Secretary, A.P.Residential Educational Institutions Society,
Hyderabad.
- 2 Principal, A.P.Residential School, Kodigenahalli, Ananthapur

District.

- 3 The Principal Secretary, Education Department, Hyderabad.
[R-3 is impleaded as per Court order dated 9.2.2004 in
WPMP.No.2166/04]

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not regularizing the services of the petitioner in the post of Librarian with effect from 1995 in A.P.Residential School at Kodigenahalli as illegal, arbitrary and in violating of Article 14 and 16 of the Constitution of India and to set aside the proceedings in RC.No.27-A/D/94-04, dtd.22.01.2004 of the second respondent and consequently direct the respondents to appoint the petitioner in the post of Librarian.

Counsel for the Petitioner: SMT.A.CHAYA DEVI

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

The Court made the following :

ORDER:

Heard Smt A.Chaya Devi, the learned counsel appearing for the petitioner, the learned Government Pleader for School Education appearing for the third respondent and Sri Moola Vijaya Bhaskar, the learned counsel appearing for the respondents 1 and 2.

The petitioner herein, claiming to have been appointed as a Record Assistant but working as a Librarian, filed this writ petition, *inter alia*, seeking for a writ of Mandamus to declare the action of the respondents in not regularizing his services in the post of Librarian with effect from 1995 and also to set aside the impugned proceedings dated 22.01.2004 as bad, illegal and void.

Initially, the writ petition was filed for the aforesaid relief, *inter alia*, on the allegations that the petitioner was appointed as a Record Assistant with the second respondent-School on regular basis on 11.06.1993. Thereafter, as per the proceedings issued by the second respondent on 30.09.1994, which were in pursuance of the orders issued by the first respondent dated 25.03.1994, the petitioner was asked to attend the duties in the School Library and accordingly took charge from Sri G.Venkata Narayana vide order dated 26.09.1994. Thus, the petitioner has been discharging duty as a Librarian since then. It is further pointed out that the then Librarian Sri B.Shankar Rao retired in February 1994 and thereafter one

Sri G.Venkata Narayana, Record Assistant was attending the duties of the School Library and on his transfer to Gorantla in Kurnool District on 30.09.1994, the petitioner was asked to take charge of the School Library in such a clear vacancy. The petitioner had passed B.A. and completed B.Ed., with Telugu Pandit Training and also passed Certificate of Library Information Science Course in the year 1995. Therefore, in view of his qualifications, he is fully eligible for the post of the said

Librarian. The petitioner filed a representation on 12.07.1995 to the first respondent for conversion of his post from Record Assistant into that of School Librarian since he has been working all along and is fully qualified for such post. The said representation was forwarded to the second respondent, who recommended the case of the petitioner for consideration, and for passing favourable orders in the existing vacancy. However, there was no further action, the petitioner had made another representation on 21.09.1995 through proper channel for claiming to be regularly appointed in the post of Librarian on the basis of his qualifications and also clear vacancy existing apart from already discharging the duties in the said post. It is stated that the post of Librarian is a non-selection post and he being in service candidate and fully qualified, his case has to be considered. However, the first respondent, as per the proceedings dated 03.02.1996, did not accede the petitioner's case on the ground that it is not possible to promote him as a Librarian in view of the Recruitment Rules. Whereupon, the petitioner had filed once again a comprehensive representation on 24.09.2003 pointing all the aforesaid aspects in regard to the discharge of duties and also put in more than 10 years of service and the required qualifications. Yet, the first respondent again passed orders on 13.10.2003 rejecting the petitioner's claim on the ground that there is no channel for promotion from the post of Record Assistant to the post of Librarian. The petitioner points out that having given charge of the post of Librarian and extract work all along successfully without any blemish, and he is being paid only the salary of Record Assistant for no fault of him and the respondents are virtually extracting work from him without proper pay to which he is entitled under Law. Hence, the writ petition.

Initially, Court granted the following interim direction in W.P.M.P.697 of 2004, dated 08.01.2004:

“The case of the petitioner is that while he was working as Record Assistant in 2nd respondent's school, he was asked to perform the duties of Librarian in the same School w.e.f. 30.09.1994. Since then, the petitioner is discharging the duties of Librarian.

The complaint of the petitioner is that though he has been continuously performing the said duties as Librarian, the respondents are not paying the salary attached to the post of Librarian.

It need not be stressed that even the person who is officiating a particular post, is

also entitled to draw the salary attached to the post.

Therefore, I am of the prima facie opinion that the petitioner is entitled for the salary attached to the post of Librarian so long as he is working as such.

The respondents are directed to pay the salary attached to the post of Librarian in the 2nd respondent school to the petitioner, during the pendency of the writ petition.”

Thereupon, the respondents 1 and 2 filed a counter affidavit seeking vacation of stay, *inter alia*, reiterating the same to the effect that the petitioner’s appointment being only a Record Assistant, he cannot make any claim of the post of Librarian which can be filled up by direct recruitment and there is no promotion channel. It was also denied that the post of Librarian is a non-selection post. Further mere possessing of qualifications would not confer any right to the petitioner. Therefore, the petitioner’s claim was rightly rejected. However, it was further stated that the petitioner never discharged any additional duties of Librarian and placing him only as a stop gap arrangement and he has already been relieved on 22.01.2004. It is further pointed out that apart from variation in both the posts, there is also greater distinction between the two scales as mentioned below:

Librarian Scale Record Assistant Scale

Rs.5000 –150 –5300 –170– Rs. 2870–60–3050 – 80 –
6150 – 200 – 7150 – 250 – 3450 – 100 – 3950 – 120-
8400 – 300 – 9900 – 350 - 4550 – 150 – 5300 – 170 -
10600 5470.

Hence, the petitioner is not entitled to make any claim.

On hearing both sides, this Court sought to implead the Principal Secretary, Education as third respondent as per the following order in W.P.M.P.No.2166 of 2004, dated 09.02.2004:

“The Principal Secretary, Education shall be impleaded as 3rd respondent in this writ petition.

The third respondent is directed to file an affidavit in this Court, as to how the affairs of the A.P. Residential Educational Institutions Society, Hyderabad in particular the A.P. Residential School, Kodigenahalli, Ananthapur District are being run with a Record Assistant working as a Librarian In-charge for nearly a decade since 30.09.1994, when the writ petitioner, who is admittedly a Record Assistant has been ordered to attend duties relating to the School Librarian in lieu of an earlier Record Assistant doing those functions having been transferred. The petitioner claims to have been In-charge as the School Librarian since the orders of the Principal of the A.P. Residential School, Kodigenahalli, Ananthapur District dated 30.09.1994.

It is represented by the learned Standing Counsel for the A.P. Residential Education Institutions Society that the writ petitioner has now been withdrawn and a Music Teacher has been appointed to perform the functions of a Librarian. As public funds and drawals from the Exchequer are involved in the maintenance of Residential Educational Institutions, and as these Institutions are instrumentalities of the State of Andhra Pradesh, the third respondent presumptively has an obligation to ensure proper administration. The affidavit to be filed by the third respondent and by the next date of hearing shall deal with this aspect of the matter.”

Thereafter, the third respondent, who has been impleaded after the orders on 09.02.2004, stated that the post of Librarian in all the Schools were not filled up to maintain uniform staff pattern in all the Residential Schools under the Society. It is further stated that as per the norms fixed for creation of one post of Librarian in the Schools vide Director of Public Instructions proceedings F.Dis.No.765/A/51, dated 30.08.1951, the strength should be more than 500 students in the School. Therefore, there is no need of Librarian in the second respondent school, since the strength is less than 500. It is also pointed out that the Libraries are being looked after by one of the teaching staff. It is also pointed out that the post of Library Attender was sanctioned to the first three Residential Schools to assist the full time graduate Librarian. Thus, the petitioner being Record Assistant was entrusted with the duties of Record Assistant for School Library as per the proceedings dated 30.09.1994 but not as a Library In-charge. The petitioner cannot claim that he is discharging the duties of Librarian. Further, there is no need to fill up the post of Librarian as the strength of the School is only 324 students.

Considering the submissions made from both the sides and on perusal of the material, the question that has to be considered in this writ petition is as to whether the petitioner, who has been appointed as a Record Assistant with the second respondent, can claim for a regular appointment in the post of Librarian having regard to placing him In-charge and discharging the duties for quite number of years all along ?

There is no dispute to the fact that the petitioner was appointed to the post of Record Assistant on 11.06.1993 and thereafter he was placed In-charge of the Library on 30.09.1994. A clear vacancy arises for the said post of Librarian in view of the retirement of incumbent. The petitioner having worked for quite a long time and all along discharging duties as Librarian, he made representations as aforesaid to the respondents for conversion or for regular appointment in the post of Librarian. Since he holds all the qualifications for the post of Librarian. With the experience which he has already put in and also the qualifications, his case requires to be considered. However, the rejection on the part of the respondent No.2 on both the occasions was only on the ground that the post of Librarian has to be filled up by direct recruitment and there is no channel of promotion from amongst the Record Assistants and therefore the petitioner can make any claim.

However, curiously from the counter affidavit filed on behalf of the third respondent who has been impleaded subsequently, it is stated that as per the norms laid down by them, there is no need for the post of Librarian with the second respondent-School as the strength of the School is only 324 students. Further, the post of School Librarian was sanctioned which is on par with the Record Assistant as held by the petitioner and therefore the petitioner, who has been discharging the duties of a Librarian, cannot claim for the post of Librarian In-charge. As regard the aforesaid aspects as to whether there is any requirement of Librarian or not or whether there is any such Post created like Record Assistant/Librarian with the second respondent, there is no pleading forthcoming on behalf of the second respondent. Thus, in this regard, there is a slight variation in the stands taken by the third respondent on one side and the second respondent on the other. No-doubt, prima facie and possible too technically the petitioner cannot claim for the post of Librarian as the post of Record Assistant is not a source of channel. However, the fact remains that he has been discharging his duties as Librarian more than Record Assistant from 30.09.1994 but he is being paid the salary of the Record Assistant only. There is

nothing on record to show that there is any such post sanctioned with the second respondent as Record Assistant/Librarian as pointed out by the third respondent in its counter nor is it the case of the second respondent that the petitioner was posted as Record Assistant/Librarian whereas the orders dated 13.09.1994 clearly states as if is only last to take charge as In-charge Librarian not as a Record Assistant Librarian. Therefore, it cannot be said that any such appointment of the petitioner in the post of Record Assistant for School Library. There is a serious dispute in regard to the strength of the students. The third respondent stated that the strength of the students is only 324 but on behalf of the petitioner it is stated that it is not so the strength is quite on higher side i.e., more than 500 and therefore the plea that there is no requirement of Librarian cannot be accepted. Be that as it may, by taking into consideration as per the Rules the petitioner cannot make any claim for the post of Librarian unless and until such post is sought to be filled up by a due process where the petitioner's case can come up for consideration on a proper application. It is not denied that the petitioner has been discharging his duties more firmly as an In-charge Librarian from 30.09.1994 which is now almost touching the period of decade, yet he is being paid the salary of Record Assistant only. As already observed by this Court though at the Interlocutory stage that the person who is officiating a particular post is also entitled to draw the salary attached to the post. There cannot be any dispute in regard to the aforesaid principles which can be taken as a sound basis. Two counters were filed on behalf of the respondents. The matter is

still in a volatile situation as to whether there is any necessity for a Librarian or not as per the norms as stated by the third respondent and also as to whether there is any process for regular selection has to be initiated or not and even including as to whether there is any such post of Record Assistant-Librarian. It is needless to mention that having regard to such long service, the respondents would certainly keep upon their mind to consider the petitioner's case for appointment thereto more so having regard to the qualifications held by him and his long experience. However, such exercise has to be done only when the respondents decided to fill up the post of Librarian. However, it cannot be stated that the petitioner should be given a post other than that of post to which he is posted where he is discharging duties. In view of the same, it has to be held that the petitioner, though entitled to be considered for the post of Librarian when the process is on, is entitled to the salary to the said post which is held by him now.

The writ petition is, accordingly, allowed, directing the respondents to take into consideration the aforesaid observations and consider the petitioner's case for regular appointment to the post of Librarian and further directed the payment of the salary on the same scales as applicable to that of Librarian from 30.09.1994. The entire exercise shall be completed within a period of three months from the date of a copy of this Court. No costs.

B. PRAKASH RAO, J

14th February 2005.

Chvn.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the, the Monday, the Fourteenth day of February Two thousand and five.

ASSISTANT REGISTRAR.

// TRUE COPY//

SECTION OFFICER.

To

- 1 Secretary, A.P.Residential Educational Institutions Society,
Hyderabad.
- 2 Principal, A.P.Residential School, Kodigenahalli, Ananthapur

District.

- 3 The Principal Secretary, Education Department, Hyderabad.
[R-3 is impleaded as per Court order dated 9.2.2004 in
WPMP.No.2166/04]

4 Two C.Cs. to the G.P. for School Education, High Court Buildings,
Hyderabad (OUT).

5 Two C.D. copies.